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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 RAUL ARELLANO, JR. ,

13 Plaintiff,

14 v.

15 OFFICER HODGE, et al.,

16 Defendants.  
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Case No.: 14-cv-590 JLS (JLB)

**ORDER DENYING:**

**(1) MOTIONS FOR DEPOSITIONS;  
(2) MOTION FOR APPOINTMENT  
OF COUNSEL;  
(3) MOTIONS FOR COPY OF  
DEPOSITION TRANSCRIPT;  
(4) MOTIONS FOR COPIES OF  
MOTIONS; AND  
(5) MOTION TO JOIN STATE  
ACTION**

**[ECF Nos. 156, 158, 161, 167, 169]**

22 Before the Court is Plaintiff Raul Arellano, Jr.'s five motions requesting related and  
23 overlapping relief. (ECF Nos. 156, 158, 161, 167, 169.) Plaintiff is a state prisoner  
24 proceeding *pro se* and *in forma pauperis*, alleging civil rights violations pursuant to 42  
25 U.S.C. § 1983 against Defendants J. Chau, M. Glynn, D. Hodge, Dr. Sedighi, K. Seeley,  
26 Nurse Velardi, and L. Zamora. (ECF No. 126.) On October 18, 2017, Plaintiff filed a four-  
27 part motion comprised of: (1) Motion for Deposition of Officer Hodge, Nurse Velardi, Dr.  
28 Chau, and Defendants' Expert Witness; (2) Motion for Appointment of Counsel; (3)

1 Motion for a Copy of Transcripts of Plaintiff's Deposition; and (4) Request for a Copy of  
2 This Motion. (ECF No. 156.) Following the filing of this motion, Plaintiff filed four  
3 additional motions requesting the same or related relief as his first motion, as is discussed  
4 below. (*See* ECF Nos. 158, 161, 167, 169.) Attached as an exhibit to one of these motions  
5 is a "Motion Requesting to Join or Move a State Tort Case." (ECF No. 169 at 9.) For the  
6 reasons discussed below, the Court **DENIES** Plaintiff's Motions for (1) Depositions of  
7 Officer Hodge, Nurse Velardi, Dr. Chau, Dr. Sedighi, and Defendants' Expert Witness; (2)  
8 Appointment of Counsel; (3) Copy of Transcript of Plaintiff's Deposition; and (4) Copies  
9 of Motions. The Court also **DENIES** Plaintiff's request to "join or move" his state court  
10 case.

11 **I. Motions for Deposition of Officer Hodge, Nurse Velardi, Dr. Sedighi, Dr.**  
12 **Chau, and Defendants' Expert Witness**

13 Plaintiff moves the Court for leave to conduct the depositions of Defendant Officer  
14 Hodge, Defendant Nurse Velardi, Defendant Dr. Chau, Defendant Dr. Sedighi, and  
15 Defendants' expert witness. (ECF Nos. 156, 169.) On October 18, 2017, Plaintiff first  
16 filed a motion to depose four of these individuals: Officer Hodge, Nurse Velardi, Dr. Chau  
17 and Defendants' expert witness. (ECF No. 156.) On November 1, 2017, the Court ordered  
18 the parties to meet and confer on Plaintiff's request to take these depositions and required  
19 Defendants to file a response to Plaintiff's motion. (ECF No. 159.) On November 16,  
20 2017, Defendants filed a response detailing the parties' meet and confer efforts, which  
21 concluded without resolution of the issue, and opposing Plaintiff's requests. (ECF No.  
22 163.) On November 22, 2017, Plaintiff filed a second motion requesting the deposition of  
23 Defendants Officer Hodge, Nurse Velardi, and Dr. Chau, as well as an additional  
24 defendant, Defendant Dr. Sedighi. (ECF No. 169.) In this motion, Plaintiff also requests  
25 an order requiring Defendants to arrange a video recording of the depositions with an  
26 officer authorized to administer oaths. (*Id.* at 2.) Plaintiff further requests that the Court  
27 order the costs of the deposition, if any, be paid by the "state," or "added on my account as  
28 how it was added the filing of this case." (*Id.*)

1 Defendants argue that Plaintiff's request for depositions should be denied because  
2 (1) Plaintiff did not file his motion in time to allow for the depositions to take place before  
3 the October 20, 2017 discovery cut-off, (2) Defendants should not be ordered to pay for  
4 the depositions as Plaintiff failed to utilize less expensive forms of discovery, and (3)  
5 Plaintiff already knows Defendants' version of the facts and has received their expert  
6 report. (ECF No. 163 at 2–3.)

7 Plaintiff's request to depose four defendants and Defendants' expert witness is  
8 **DENIED** for two reasons: it is untimely and Plaintiff is not entitled to have the costs of the  
9 depositions borne by the Defendants or the Court.

10 First, Plaintiff's request is untimely. On April 26, 2017, Plaintiff requested, and the  
11 Court granted, an extension of the deadline to complete all discovery to October 20, 2017.  
12 (ECF No. 138; ECF No. 139 at 2.) The operative scheduling order states, “‘Completed’  
13 means that all discovery under Rules 30–36 of the Federal Rules of Civil Procedure, and  
14 discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance  
15 of the cut-off date, so that it may be completed by the cut-off date, taking into account the  
16 times for services, notice, and response as set forth in the Federal Rules of Civil Procedure.”  
17 (ECF No. 139 at 2.) Plaintiff was reminded of the need to complete all discovery in a  
18 timely manner by the Court in early September. (ECF No. 152 at 2) (“The Court directs  
19 Plaintiff that any request for discovery must be prepared and served on Defendants  
20 pursuant to Federal Rules of Civil Procedure 26–37 and must be completed within the time  
21 constraints of the scheduling order in this case.”)

22 Plaintiff's first motion to depose Officer Hodge, Nurse Velardi, Dr. Chau, and  
23 Defendants' expert witness was filed on October 18, 2017. (ECF No. 156.)<sup>1</sup> This motion  
24 was postmarked on October 12, 2017 (eight days before the discovery cut-off) and received  
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26 <sup>1</sup> Plaintiff need not have filed a motion to take the depositions of Defendants or their expert witness. *See*  
27 Fed. R. Civ. P. 30(a). Plaintiff could have noticed the depositions as set forth in the Federal Rules of Civil  
28 Procedure. *See* Fed. R. Civ. P. 28; Fed. R. Civ. P. 30. And, notably, this first motion by Plaintiff only  
seeks leave to take the depositions. It seeks no relief from the Court with respect to payment of costs or  
deposition logistics.

1 by the Court on October 16, 2017. (ECF No. 156 at 4.) Even if this motion were to have  
2 been granted the same day it was received, this would leave insufficient time to provide all  
3 parties with reasonable written notice of the depositions pursuant to Rule 30(b), organize  
4 and schedule five depositions inside the prison, and conduct five depositions before the  
5 discovery cut-off. Thus, it was untimely.

6 On November 22, 2017, Plaintiff filed a second motion to depose certain defendants,  
7 adding Dr. Sedighi and, for the first time, requesting assistance with deposition costs and  
8 for Defendants to arrange video depositions in the prison. (ECF No. 169 at 2.) This motion  
9 requests that the “state pay the cost, or since am [sic] indigent, to be added on my account  
10 as how it was added the filing of this case.” (*Id.*) This request was even more untimely,  
11 as it was filed over a month after the close of discovery.

12 Plaintiff asserts that he previously mailed a similar motion to depose Defendants  
13 Hodge, Nurse Velardi, Doctor Chau, and Dr. Sedighi, a putative copy of which he attaches  
14 to his October 18, 2017 motion. (*Id.* at 1.) This assertion is not persuasive. The Court did  
15 not receive the motion Plaintiff asserts he sent on August 29, 2017. Plaintiff states that “it  
16 looks like [the motion] never made it to court (according to record of the summary  
17 dockets).” (*Id.* at 1.) Once it became clear that the Court had not received the motion,  
18 Plaintiff had ample time to mail it sufficiently in advance of the discovery cut-off, but failed  
19 to do so.<sup>2</sup> Thus, the alleged attempted filing of the earlier motion does not excuse the late-  
20 filing of the motions pending before the Court.

21 Plaintiff, thus, has not established good cause to excuse his untimeliness. In light of  
22 the Court’s two warnings to Plaintiff of the need to complete discovery by the discovery  
23 cut-off and Plaintiff’s April request to the Court to extend the discovery cut-off date, which  
24 was granted, the close of discovery could not have come as a surprise to Plaintiff.  
25 Furthermore, Plaintiff himself was deposed in this case on March 24, 2017 and he was  
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27 <sup>2</sup> Additionally, the Court has concerns about the veracity of Plaintiff’s assertion. Plaintiff makes no  
28 mention of a prior motion to depose defendants in his October 18, 2017 motion. (*See* ECF No. 156.) This  
claim of a lost motion only arose after Defendants argued that Plaintiff’s motion was untimely. (*See* ECF  
No. 163.)

1 deposed in at least one of his other cases, so he has been well-aware for some time that  
2 depositions are one available discovery tool.<sup>3</sup>

3 Plaintiff's motion is also denied because Plaintiff represents that he does not have  
4 the financial ability to conduct the depositions; but Plaintiff, not Defendants or this Court,  
5 must bear the cost of any depositions he notices. Rule 30(b)(3)(A) provides that "[t]he  
6 noticing party bears recording costs" of a deposition. Additionally, Plaintiff would be  
7 responsible for arranging the presence of an officer authorized to administer oaths either  
8 by federal law or by the law in the place of examination. Fed. R. Civ. P. 28(a)(1)(A).

9 While 28 U.S.C. § 1915(a) and (b) permit federal courts to authorize commencement  
10 of suit without prepayment of fees and costs upon a showing of indigency, and allow  
11 indigents who are unable to pay the entire filing fee upon filing to pay in installments,  
12 § 1915 does not authorize or require federal courts to finance or subsidize a civil action by  
13 paying fees or other costs associated with the litigation. *See, e.g., Tedder v. Odel*, 890 F.2d  
14 210, 211–12 (9th Cir. 1989) (per curiam) ("The Supreme Court has declared that the  
15 expenditure of public funds on behalf of an indigent litigant is proper only when authorized  
16 by Congress.") (internal citations and quotation marks omitted); *Bovarie v.*  
17 *Schwartzenegger*, No. 08-cv-1661 LAB (NLS), 2010 WL 4538109, at \*2 (S.D. Cal. 2010)  
18 (denying request by incarcerated *in forma pauperis* plaintiff for court to bear costs  
19 associated with depositions). "The *in forma pauperis* statute does not authorize the  
20 expenditure of public funds for a court-appointed deposition reporter to take depositions."  
21 *Miller v. Rufion*, No. CIV.08-1233 BTM (WMC), 2010 WL 2485956, at \*1 (E.D. Cal. June  
22 14, 2010) (citing *Wright v. United States*, 948 F.Supp. 61, 61–62 (M.D. Fla. 1996) (parties  
23 proceeding *in forma pauperis* are responsible for payment of discovery costs, including the  
24 costs of depositions, fees for court reporters, and transcripts)).

25 Plaintiff had other avenues of discovery available to him; he could have conducted  
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27 <sup>3</sup> Despite this failure to demonstrate good cause, the Court might have excused Plaintiff's untimeliness,  
28 except that Plaintiff has made it clear he does not have the resources to conduct the desired depositions  
anyway. For the reasons next addressed, the Court cannot grant Plaintiff's request to have Defendants  
pay the costs of the depositions.

1 written depositions or served Defendants with requests for production, requests for  
2 admissions, or interrogatories, but chose not to do so. For the reasons stated above,  
3 Plaintiff's untimely requests to depose Officer Hodge, Nurse Velardi, Dr. Chau, Dr.  
4 Sedighi, and Defendants' expert witness are **DENIED**.

## 5 **II. Motion for Appointment of Counsel**

6 Plaintiff also moves the Court, for the fourth time, for appointment of counsel. (ECF  
7 No. 156 at 1–2.) Plaintiff argues that his physical and mental health issues, limited access  
8 to the law library and legal materials, unfamiliarity with discovery procedures, and  
9 numerous cases in federal and state courts warrant the appointment of counsel. (*Id.*) For  
10 the reasons stated below, Plaintiff's request is **DENIED**.

11 There is no constitutional right to the appointment of counsel in § 1983 cases.  
12 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). However, the Ninth Circuit has  
13 held that “a court may under ‘exceptional circumstances’ appoint counsel for indigent civil  
14 litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th  
15 Cir. 2009) (quoting *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)).  
16 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the  
17 likelihood of success on the merits as well as the ability of the petitioner to articulate his  
18 claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* (quoting  
19 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Neither of these considerations is  
20 dispositive and instead must be viewed together. *Id.* (quoting *Wilborn v. Escalderon*, 789  
21 F.2d 1328, 1331 (9th Cir. 1986)).

22 “A plaintiff that provides no evidence of his likelihood of success at trial fails to  
23 satisfy the first factor of the [exceptional circumstances] test.” *Torbert v. Gore*, No. 14-  
24 cv-2991 BEN (NLS), 2016 WL 1399230, at \*1 (S.D. Cal. Apr. 8, 2016); *see also Bailey v.*  
25 *Lawford*, 835 F. Supp. 550, 552 (S.D. Cal. 1993) (“Without some evidence that he is likely  
26 to succeed at trial, plaintiff fails to satisfy . . . [the exceptional circumstances test's] first  
27 factor.”). Here, Plaintiff has not offered evidence suggesting that he has a likelihood of  
28 success on the merits, and there is little before the Court regarding the merits of Plaintiff's

1 case, other than the assertions in the operative complaint. Thus, at this stage of the case,  
2 when Plaintiff has not yet proffered evidence to the Court in support of his claims, the  
3 Court cannot find that he is likely to succeed on the merits of his claims. *See Garcia v.*  
4 *Smith*, No. 10-cv-1187 AJB (RBB), 2012 WL 2499003, at \*3 (S.D. Cal. June 27, 2012)  
5 (denying motion for appointment of counsel when it was too early to determine whether  
6 any of plaintiff’s claims would survive a motion for summary judgment).<sup>4</sup> Accordingly,  
7 the Court concludes that Plaintiff fails to satisfy the first “exceptional circumstances” factor  
8 that would support his request for the appointment of counsel.

9 As to the second factor, Plaintiff argues that he is unable to adequately articulate his  
10 claims because he (1) is only allowed a short amount of time with the law librarian every  
11 two weeks; (2) is unfamiliar with discovery rules and procedures; (3) has “approximately”  
12 twelve cases in federal and state court; (4) is suffering from medical and mental health  
13 issues that impair his memory and ability to work on his cases; and (5) is missing his legal  
14 books. (ECF No. 156 at 1–2.)

15 Plaintiff fails to demonstrate an inability to represent himself beyond the ordinary  
16 burdens encountered by incarcerated plaintiffs representing themselves *pro se*. First, the  
17 Court previously considered, and rejected, Plaintiff’s argument that his physical and mental  
18 disabilities entitle him to the appointment of counsel. Plaintiff previously moved for  
19 appoint of counsel on April 13, 2016 (ECF No. 95), May 3, 2017 (ECF No. 138), and  
20 August 24, 2017 (ECF No. 151). In these motions, Plaintiff argued that his medical and  
21 mental health issues prevented him from adequately litigating this case, citing the same  
22 symptoms as he does in the instant motion. (*See* ECF No. 138 at 3–4; ECF No. 95 at 2.)  
23 The Court considered Plaintiff’s physical and mental disabilities in denying Plaintiff’s  
24 previous requests for counsel. (ECF No. 139 at 7–9; ECF No. 96 at 1–2.) Accordingly,  
25 for the reasons set forth in the Court’s prior orders denying Plaintiff’s request for  
26 appointment of counsel, Plaintiff has not established that his physical and mental health  
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28 <sup>4</sup> Plaintiff has not filed a response to Defendants’ Motion for Summary Judgment (ECF No. 164).

1 issues constitute the exceptional circumstances required for appointment of counsel. (*See*  
2 *id.*) (citing *Palmer*, 560 F.3d at 970.)

3       Second, limited access to the law library and legal materials and unfamiliarity with  
4 the law are circumstances common to most incarcerated plaintiffs and do not establish  
5 exceptional circumstances. *See, e.g., Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th  
6 Cir. 1990) (denying appointment of counsel where plaintiff complained that he had limited  
7 access to law library and lacked a legal education); *Galvan v. Fox*, No. 2:15-CV-01798  
8 KJM DB, 2017 WL 1353754, at \*8 (E.D. Cal. Apr. 12, 2017) (“Circumstances common to  
9 most prisoners, such as lack of legal education and limited law library access, do not  
10 establish exceptional circumstances that warrant a request for voluntary assistance of  
11 counsel.”).

12       Third, Plaintiff’s legal claims, and the factual bases for those claims in this case, are  
13 not so complex as to require the appointment of counsel. Plaintiff’s pleadings and other  
14 filings to date are well-written and organized; they demonstrate that Plaintiff is able to  
15 understand and articulate the essential facts supporting his claims and has an adequate  
16 understanding of basic litigation procedure.

17       Lastly, the number of other active cases Plaintiff has in federal and state court does  
18 not amount to extraordinary circumstances. To the contrary, Plaintiff’s ability to litigate  
19 up to twelve cases is evidence that Plaintiff is able to articulate his claims *pro se* while  
20 balancing multiple cases. Further, Plaintiff chose to file numerous cases in federal and  
21 state court; Plaintiff cannot create “extraordinary circumstances” by deciding to file  
22 multiple actions.

23       For the reasons stated above, the second “exceptional circumstances” factor also  
24 does not support Plaintiff’s request for appointment of counsel. Thus, Plaintiff’s motion  
25 for appointment of counsel is **DENIED**. This denial is without prejudice; Plaintiff is not  
26 precluded from requesting the appointment of counsel at a later stage in this case, should  
27 he be able to make the requisite showing of exceptional circumstances at that time.

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### III. Motions for Copy of Plaintiff's Deposition Transcript

In numerous motions, Plaintiff requests a copy of his deposition so that he can review the transcript for errors. (ECF Nos. 156, 158, 161, 167.) Plaintiff further requests an order barring Defendants from using Plaintiff's deposition transcript in any court proceeding because he has not had the opportunity to review the transcript and make changes.<sup>5</sup> (ECF Nos. 161 at 1.) The Court construes this as a request to suppress the use of the deposition testimony as a sanction for a perceived discovery violation by Defendants.<sup>6</sup> Plaintiff's request for a copy of his deposition transcript is **DENIED** as moot because Defendants provided Plaintiff with a copy of the transcript on December 5, 2017. (ECF No. 174-5 at 2.) Because Plaintiff has not established any discovery violation, Plaintiff's request for an order barring Defendants from using his deposition transcript is **DENIED**.

Federal Rule of Civil Procedure 30(e) provides that "[o]n request by the deponent or a party *before the deposition is completed*, the deponent must be allowed 30 days . . . (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them." Fed. R. Civ. P. 30(e)(1) (emphasis added). "Courts insist on strict compliance with Rule 30(e)'s technical requirements" and may not allow corrections that fail to comply. *Tourgeman v. Collins Fin. Servs., Inc.*, No. 08-CV-1392 JLS NLS, 2010 WL 4817990, at \*2 (S.D. Cal. Nov. 22, 2010) (citing *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397 F.3d 1217, 1224–26 (9th Cir. 2005) (affirming order striking deposition errata "because [plaintiff]

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<sup>5</sup> By these motions, Plaintiff requests only to be provided with the transcript of his deposition and to preclude Defendants from using the deposition testimony in evidence. He has not moved for leave to make changes to the transcripts. Further, Defendants provided Plaintiff with a copy of his deposition transcript in early December. The Court notes that Plaintiff has not supplemented his filings with anything indicating that his transcript actually contains inaccuracies that need correction, much less why any such corrections would be appropriate. See *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397 F.3d 1217, 1224–26 (9th Cir. 2005) (finding that statement of reasons explaining corrections is "an important component . . . because the statement permits an assessment concerning whether the alterations have a legitimate purpose").

<sup>6</sup> If Plaintiff believes he has other bases for precluding the use of his deposition testimony at trial, other than alleged discovery violations by Defendants, these reasons should be raised with the District Judge at the appropriate time.

1 failed to comply with the procedural dictates of FRCP 30(e).’’)).

2 Plaintiff was deposed on March 24, 2017. (ECF No. 167 at 1.) On October 19,  
3 2017, Plaintiff filed a second request for his deposition transcript, stating that he “never  
4 had a notice to review transcripts regarding discrepancy’s [sic] that need to be corrected.”  
5 (ECF No. 158 at 1.) On November 6, 2017, Plaintiff filed a third request for his deposition  
6 transcript. (ECF No. 161 at 1.) In this motion, Plaintiff requests the Court prohibit  
7 Defendants from using his deposition transcript in any court proceeding “mainly because  
8 I haven’t review[ed] it and approved it.” (*Id.* at 1.) On November 20, 2017, Plaintiff filed  
9 a fourth request for his deposition transcript. (ECF No. 167.) In this motion, Plaintiff  
10 asserts that he asked Defendants for a copy of his deposition transcript on the day of his  
11 deposition and Defendants agreed to provide a copy. (*Id.* at 1.)

12 Defendants responded to Plaintiff’s requests by attaching the last page of the  
13 transcript of Plaintiff’s deposition, reflecting that Plaintiff did not request the opportunity  
14 to review the transcript. (ECF No. 174-3 at 3.) The Reporter’s Certificate, signed under  
15 penalty of perjury, also indicates that “a review of the transcript by the deponent was not  
16 requested.” (*Id.* at 4.) Also attached to Defendants’ response is a letter from Plaintiff dated  
17 March 24, 2017 stating, “I forgot to mention that if theres [sic] anyway I can be sent a copy  
18 of the transcripts the lady there made. Also the exhibits. This is just so I can make sure  
19 everything was transcribed as how I testify to. To make sure is not inaccurate.” (ECF No.  
20 174-4 at 2.) Plaintiff filed a response on December 13, 2017, in which he admits that he  
21 did not request a transcript until “after the reporter had finished typing.” (ECF No. 181 at  
22 1.) In his response, Plaintiff also attempts to explain his March 24, 2017 letter by saying  
23 that he meant to say that he forgot to ask for a copy of the deposition *exhibits*, not the  
24 transcript. (*Id.* at 2.)

25 The Court finds that the record indicates Plaintiff failed to request an opportunity to  
26 review the transcript before his deposition concluded, as Rule 30(e) requires. The plain  
27 language in Plaintiff’s letter contradicts his explanation for his statement that he “forgot to  
28 mention that if theres [sic] anyway I can be sent a copy of the transcripts.” (*See* ECF No.

1 174-4 at 2.) The last page of the deposition transcript and the Reporter's Certificate both  
2 indicate that Plaintiff did not request the opportunity to review the transcript before his  
3 deposition ended.

4 Plaintiff has failed to establish a discovery violation by Defendants such that the  
5 imposition of sanctions in the form of evidence preclusion would be appropriate.  
6 Accordingly, Plaintiff's request for an order barring Defendants from using his deposition  
7 transcript in any court proceeding is **DENIED**.

#### 8 **IV. Motion To Consolidate Cases**

9 Plaintiff attaches a "Motion Requesting to Join or Move a State Tort Case" as an  
10 exhibit to his November 22, 2017 motion requesting a copy of his deposition transcript.  
11 (ECF No. 167 at 9.)<sup>7</sup> Plaintiff states that he "would like to move my tort state case 37-  
12 2014-00034262-CV-PO-CTL to this federal court so my state claim can be heard here  
13 together with current fed case." (*Id.*) Plaintiff provides no legal authority for this request.  
14 (*See id.*) The Court construes Plaintiff's request as a petition for removal and motion to  
15 consolidate this case with his state tort case. Both requests are denied in turn.

16 Plaintiff has "no power to remove his own case" from state court because "[r]emoval  
17 is available only to defendants." *Okot v. Callahan*, 788 F.2d 631, 633 (9th Cir. 1986)  
18 (citing *In re Walker*, 375 F.2d 678 (9th Cir. 1967) (per curiam)). *See also Progressive W.*  
19 *Ins. Co. v. Preciado*, 479 F.3d 1014, 1017 (9th Cir. 2007); 28 U.S.C. §§ 1441, 1443, 1446  
20 (providing that a "defendant" may remove state court cases to federal court).

21 Absent proper removal from state court, this Court has no authority to consolidate  
22 the instant action with Plaintiff's state court case. Federal Rule of Civil Procedure 42  
23 provides, "If *actions before the court* involve a common question of law or fact, the court  
24 may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate  
25 the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ.

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28 <sup>7</sup> Plaintiff states that he filed this motion on February 20, 2017 and recently found a copy of the motion  
when some papers were returned to him. (*Id.* at 2.) The Court has no record of having received this  
motion prior to the filing of Plaintiff's November 22, 2017 motion.

1 P. 42(a) (emphasis added). Rule 42(a) “cannot be used by a federal court to consolidate an  
2 action pending before it with a state court action.” *Norman v. Celgene Corp.*, No.  
3 CV077174GAFMANX, 2008 WL 11339102, at \*1 (C.D. Cal. July 31, 2008) (citing  
4 *Oregon Egg Producers v. Andrew*, 458 F.2d 382, 383 (9th Cir. 1972) (Rule 42 “applies to  
5 cases that are properly before the same court. Because this [remanded state court] case is  
6 not properly before the district court in Washington, Rule 42 cannot be invoked.”)).

7 Accordingly, Plaintiff’s request to “join or move” his state court case is **DENIED**  
8 because the state court action has not been properly removed and the Court does not have  
9 authority to consolidate Plaintiff’s state court action with this case.

#### 10 **V. Motions for Copies of Plaintiff’s Motions**

11 Plaintiff requests copies of four of his motions because he has been unable to make  
12 copies at the law library. (ECF No. 156 at 3; ECF No. 161 at 1; ECF No. 167 at 1; ECF  
13 No. 169 at 1.) Plaintiff consistently requests copies of the motions he files. (*See* ECF No.  
14 172 at 2.) The Court declines to provide Plaintiff with copies of his multiple motions as  
15 he has not supported these requests with good cause and “[n]umerous courts have rejected  
16 any constitutional right to free and unlimited photocopying.” *Larson v. Paramo*, No. 15-  
17 CV-308 BTM (BGS), 2016 U.S. Dist. LEXIS 67498 (S.D. Cal. May 23, 2016) (quoting  
18 *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1990)). Plaintiff’s request for copies of his  
19 motions is **DENIED**.

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1 **VI. Conclusion**

2 For the reasons discussed above, the Court **DENIES** Plaintiff's Motions for (1)  
3 Depositions of Officer Hodge, Nurse Velardi, Dr. Chau, Dr. Sedighi, and Defendants'  
4 Expert Witness; (2) Appointment of Counsel; (3) Copy of Transcripts of Plaintiff's  
5 Deposition; and (4) Copies of Motions. The Court also **DENIES** Plaintiff's request to  
6 "join or move" his state court case.

7 **IT IS SO ORDERED.**

8 Dated: January 30, 2018

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10 Hon. Jill L. Burkhardt  
11 United States Magistrate Judge  
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